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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,758	11/30/2001	Wendy M. Joyner	ROCB-1-1001	6031

7590

12/12/2003

LAWRENCE D. GRAHAM, ESQ.  
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SEATTLE, WA 98104

EXAMINER
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CHOI, JACOB Y

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/997,758	JOYNER, WENDY. M.	
	Examiner	Art Unit	
	Jacob Y Choi	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, & 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/30/2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All   b) ☐ Some \* c) ☐ None of:  
     1. ☐ Certified copies of the priority documents have been received.  
     2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4, 5, 6, & 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over James (USPN 5,660,281).

Regarding claim 1, James discloses a plurality of first candles (80), each of the first candles having a first expected burn time, a plurality of second candles (82), each of the second candles having a second expected burn time, a container (40) and wherein the first (80) and second (82) candles are packaged together within the container (40) to be removed prior to lighting, a candle lighting element (any other candles that are in the container), and a fastener (figure 4a) configured to secure the candle lighting element to the container (40). Claim(s) in a pending application should

be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974); fastener is defined as to attach firmly to something else, as by pinning or nailing.

Note: it is inherent that differently sized or shaped candles have different burn time respectively

Regarding claim 2, James discloses the claimed invention, except for a plurality of third candles that having a third expected burn time. It would have been obvious matter of design choice to change the size of the candle(s), since such a modification would have involved a mere changing in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to having plurality of candles, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 4 & 5, James discloses the claimed invention, except the details of the first, second, and third candles are floating or scented candles. It would have been obvious matter of design variation to modify candles of James to float or to be scented, since applicant has not disclosed that the difference solves any stated problem or is for any particular purpose and it appears that the most of the candles are made of wax are either scented and floats.

Note: scented candles are known in the art and it is inherent that candles float on water

Regarding claim 6, James discloses the claimed invention, except the details of each candles burn time. It is inherent that differently sized candles of James would have different respective burn time. It would have been obvious matter of design variation to modify candles of James so that the first burn time is less than 60 minutes, the second burn time is greater than 60 minutes and less than 120 minutes, and the third burn time is greater than 120 minutes, since applicant has not disclosed that the having a different burn time candles in a container solves any stated problem or is for any particular purpose and it appears the invention would perform equally well.

Regarding claim 14, James discloses the claimed invention, explained above. In addition, James discloses the candles lighting element is a candle.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over James (USPN 5,660,281) in view of Pekala et al. (USPN 6,092,932).

Regarding claim 7, James discloses the claimed invention and a box shaped container, except a commonly structured gift-bag type with a closing fastener at the top. Pekala et al. teaches a common gift-bag structure with a top end having a plurality of holes, wherein the fastener extends through the holes to secure the writing instrument & tag element to the container and closes the top end of the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use modification in James as taught by Pekala et al. in order to provide candles with

a different packaging where candles are commonly used as a gift to someone. In addition, it would have been an obvious matter of design variation to provide a additional candle (rather than a writing instrument or a tag) secured by the fastener to hold therein for an appearance, since applicant has not disclosed that utilizing a candle as a decorative apparatus other than writing instrument or a tag of Pekala et al. solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with writing instrument or a tag.

#### ***Response to Amendment***

5. Examiner acknowledges that that applicant has amended claims 1, 4, 5, 6, & 7, cancelled claims 3, 8-13, and newly added claim 14.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

#### ***Response to Arguments***

6. Applicant's arguments, see page 4, lines 9-14, filed 10/16/2003, with respect to the rejection(s) of claim(s) 1-13 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is being unpatentable over James (USPN 5,660,281).

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Higgins (USPN 4,286,710) – Christmas candle package

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Y Choi whose telephone number is (703) 308-4792. The examiner can normally be reached on Monday-Friday (10:00-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (703) 305-4939. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-7724.

JC

  
Sandra O'Shea  
Supervisory Patent Examiner  
Technology Center 2800